

HIPAA PRIVACY POLICIES

CITY OF LINCOLN

EFFECTIVE SEPTEMBER 1, 2003

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INTRODUCTION

In 1996 Congress adopted the Health Insurance Portability and Accountability Act (HIPAA). As part of the Act, Congress called for regulations promoting administrative simplification of healthcare transactions as well as regulations ensuring the privacy and security of patient information. The Department of Health and Human Services has since adopted regulations to implement these goals. The regulations apply to “covered entities” which include; health plans, healthcare clearinghouses, and health care providers who transmit any health information in electronic form in connection with a transaction covered by HIPAA. The City of Lincoln has designated itself a “hybrid entity” under the Act because it has both non-covered components and covered components. The regulations include three distinct parts: transaction standards, privacy and security.

City functions/agencies that have been identified as health care providers, meaning, they furnish, bill or receive payment for health care in the normal course of business, include: the Fire Department; the City-County Health Department; the Aging division of the Mayor’s Department; and the Emergency Communications/911 Center. However, of these agencies only the Fire Department is currently transmitting, or causing the transmission of, covered transactions in electronic form. Therefore, only the Fire Department, to the extent it operates as an “emergency medical service” is a “covered” health care component that must comply with the HIPAA Privacy Rule. The Fire Department, in its role as an Urban Search and Rescue Team, is not covered by HIPAA.

Other City functions that have been identified as “covered” under HIPAA because they meet the definition of “health plans” include the City’s self-funded dental insurance plan. This “health plan” meets the definition of a “small health plan” under HIPAA and, as such, will comply with HIPAA’s Privacy Rule effective April 14, 2004.

In addition, the City Finance Department and City Law Department, may perform “business associate” type functions for the covered health care component identified above. For instance, the City Finance Department may process payments for the Fire Department, and, in so doing, come into contact with protected health information. As such, the City Finance Department, including but not limited to the divisions City Clerk, Treasurer, Accounting, and Information Services, but not including the division Emergency Communications/911 Center, and the City Law Department, are considered covered health care components of the City, subject to HIPAA, to the extent such departments perform acts on behalf of that portion of the Lincoln Fire Department as is a covered component.

The following policies address the key requirements of the HIPAA Privacy Rule. At a minimum, each covered health care component identified above must comply with these policies. These policies may be amended, administratively, to ensure consistency with agency operations and applicable state and federal laws. All privacy policies, forms, and any amendments thereto must be approved by the City Privacy Officer and City Attorney.

PRIVACY OFFICER

GENERAL POLICY:

The City of Lincoln, a hybrid entity, has designated a City Privacy Officer responsible for the coordination and implementation of all privacy and confidentiality efforts within the City of Lincoln, a municipal corporation. In addition, the City has determined that each identified covered health care component may, in consultation with the Privacy Officer, designate a staff member to serve as the Agency Privacy Officer. The City Privacy Officer and his/her designees may have other primary job functions in addition to privacy responsibilities. The City Privacy Officer shall maintain a current list of all Agency Privacy Officers.

II. Agency Privacy Officer

The Agency Privacy Officer shall serve as the primary agency contact for privacy issues and concerns regarding the use and disclosure of protected health information and for patient rights regarding protected health information. The Agency Privacy Officer shall be responsible for responding to patient requests for further information regarding the Notice of Privacy Practices. In general, the Agency Privacy Officer should be able to address most issues concerning the use and disclosure of protected health information for the agency including, requests from individuals for access, amendment, disclosure accounting, restriction or confidential communications. The City Privacy Officer may retain control of any and all privacy matters, or may delegate the above functions to the Agency Privacy Officer; however, all privacy complaints shall be forwarded to the City Privacy Officer for response.

III. City Privacy Officer

The City Privacy Officer shall oversee all activities related to the development, maintenance, and adherence to policies and procedures regarding the use and disclosure of individually identifiable health information in accordance with state and federal laws and best business practices. The City Privacy Officer shall investigate and respond to privacy complaints and provide assistance to the Agency Privacy Officers when needed.

NOTICE OF PRIVACY PRACTICES

POLICY:

Individuals have a right to adequate notice of the uses and disclosures of his/her protected health information (PHI) and the City's legal duties with respect to such PHI.

The law dictates a specified set of core elements that a valid Notice of Privacy Practices must contain. Therefore, all City employees must use the Notice of Privacy Practices form approved for their agency. Only those covered health care components as have a direct treatment relationship with a patient must have a Notice of Privacy Practices. The covered health care components shall disclose PHI only in conformance with the contents of the Notices of Privacy Practices. The City will promptly revise its Notice of Privacy Practices whenever there is a material change to the uses or disclosures of PHI, to the individuals' rights, to its legal duties, or to other privacy practices that render the statements in the Notice no longer accurate.

PROCEDURES:

I. Distribution of Notice

The City will distribute its Notice of Privacy Practices as follows:

- A. Provide to any person who requests it.
- B. Provide to each individual the City agency has a direct treatment relationship with no later than the first service delivery, including service delivered electronically, after the Privacy compliance date of April 14, 2003.
- C. In emergency treatment situations, the Notice shall be provided to the individual as soon as reasonably practicable after the emergency treatment situation.
- D. Have Notice available at the physical service delivery site.
- E. Post Notice in a clear and prominent location at the physical service delivery site, as practicable.
- F. Prominently post and make electronically available the Notice on any web site the City maintains that provides information about its customer services or benefits.
- G. The City may provide the Notice to an individual by E-mail but only if the individual agrees to electronic notice in writing and such agreement has not been withdrawn.

II. Obtain Written Acknowledgment of Receipt

- A. Except in an emergency treatment situation, the City agency involved shall make a good faith effort to obtain a written acknowledgment of receipt of the Notice.
- B. If acknowledgment is not obtained, document why and efforts made to obtain it.

Documentation

III.

The agency shall retain copies of the signed Acknowledgment of Receipt of Notice of Privacy Practices or, if not signed, documentation of the good faith efforts made to obtain such written acknowledgment. Such documentation shall be retained for at least six years from the date it was created or from the date it was last in effect, whichever is later.

Notice of Privacy Practices for Employer-Sponsored Group Health Plans

IV.

The City sponsors health plans for its employees. Effective not later than April 14, 2004, the City must provide each participant in its self-funded group plan a Notice of Privacy Practices. The City is not required to provide a Notice of Privacy Practices where the group plan is fully insured or if an administrator agrees by contract to provide such Notice on the City's behalf.

Citations:

- §164.502(i) – Uses and disclosures must be consistent with individuals' right to notice
- §164.520(a)(1) - Individuals' right to notice
- §164.520(a)(2) - Exception for certain group health plans
- §164.520(b) - Contents of notice
- §164.520(c) - Deadlines for notice

PATIENT ACCESS TO HEALTH INFORMATION

POLICY:

An individual has the right to access, inspect and/or copy his/her protected health information (PHI) in the City agency's designated record set, for as long as the PHI is maintained in compliance with the agency's records retention policy. Exceptions to this general rule are provided herein.

PHI is individually identifiable health information maintained in or transmitted by electronic media or transmitted or maintained in another form or medium. The definition does not include employment records.

Designated Record Set includes, at a minimum, the medical and billing records about individuals maintained by or for the City agency or any other records used in whole or in part to make decisions about individuals.

PROCEDURES:

I. Access Requests

When feasible, requests should be made in writing using FORM A – "Request to Inspect and/or Copy Health Information". The form may be filled out by the individual or with assistance from a staff member.

II. Response To Request For Access

The agency must either grant or deny the request within thirty (30) days of receipt of the request, or within sixty (60) days if the PHI requested is off-site. One thirty (30) day extension is permitted if the agency provides the individual with a written statement of the reason(s) for the delay and the date by which the access request will be processed.

III. Access Is Granted

- A. The individual may choose to inspect the PHI, copy it, or both, in the form or format requested. If the PHI is not readily producible in the requested form or format, the agency must provide the individual with a readable hard copy form, or other form as agreed to by the agency and the individual.
- B. The individual and the agency will arrange a mutually convenient time and place for the individual to inspect and/or obtain a copy of the requested PHI. Inspection and/or copying will be carried out with agency staff assistance.
- C. The agency may charge a reasonable fee for the production of copies.

- D. If upon inspection of the PHI, the individual feels it is inaccurate or incomplete, the individual has a right to request an amendment according to the procedures described in the Policy concerning amendments to PHI.

IV. Denial of Access

If access to PHI is denied, in whole or in part, the Privacy Officer or his/her designee will provide a timely, written denial to the individual in plain language that must contain:

- A. The basis for the denial;
- B. If applicable, a statement of the individual's review rights; and
- C. A description of how the individual may complain to the City Privacy Officer or to the Secretary of Health and Human Services. The description must include the name, or title, and telephone number of the City Privacy Officer.
- D. If access is denied because the City agency does not maintain the PHI that is the subject of the individual's request for access, and the agency knows where the requested information is maintained, the agency must inform the individual where to direct the request for access.
- E. The agency must, to the extent possible, give the individual access to any other PHI requested, after excluding the PHI as to which the agency has grounds to deny access.

V. Denial Not Subject to Review

An agency may deny an individual access to his/her PHI without providing the individual an opportunity for review in the following circumstances:

- A. Psychotherapy notes;
- B. Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding;
- C. PHI that is prohibited from access by the Clinical Laboratory Improvements Amendments of 1988;
- D. Inmates may be denied a copy of their PHI if providing such copy would jeopardize health, safety or security (this applies only to copies, not access);
- E. The individual, when consenting to participate in research that includes treatment, agreed to temporary denial of access to PHI created or obtained

by the health care provider in the course of research and the research has not yet been suspended;

- F. The records are subject to the Privacy Act of 1974, 5 U.S.C. § 552a, and the denial of access meets the requirement of that Act; or
- G. The PHI was obtained from someone other than a health care provider under a promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information.

VI. Denial Subject to Review

An agency may also deny an individual access based on the grounds stated below, provided that the individual is given a right to have such denial reviewed in the following circumstances:

- A. A licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the individual or another person;
- B. The PHI makes reference to another person who is not a health care provider, and a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to such other person; or

VII. Review of an Access Denial

If access is denied on a reviewable ground, the individual has the right to have the denial reviewed by a licensed health care professional who is designated by the City to act as a reviewing official and who did not participate in the original decision to deny.

- A. The individual must request the review in writing.
- B. The agency will promptly provide the individual with a copy of the health care professional's written determination.
- C. The agency will provide or deny access in accordance with the determination of the reviewing official.

VIII. Documentation

The agency must document the identity of the designated record sets; the identity of the staff responsible for receiving and processing requests for access to PHI; and any communications requesting access, denial of access and results of any review by an outside professional. Such documentation shall be retained for at least six years from the date it was created or from the date it was last in effect, whichever is later.

Citations:

- §164.524 – Access of individuals to PHI
- Preamble, pg. 82554-8 – Access of individuals to PHI
- Preamble, pg. 82731, and 82485 – Specifics regarding clinical lab exemptions and state laws that preempt this exemption
- Preamble, pg. 84554-55 – Restriction of an inmate's access to PHI
- 175 NAC, Chapter 12, Skilled Nursing Facilities

USE AND DISCLOSURE OF PATIENT HEALTH INFORMATION

POLICY:

Except as otherwise described herein, unless otherwise permitted by law, a City agency must have proper, written authorization from the individual before it may use or disclose an individual's protected health information.

Upon verification that an individual has been authorized to act as a personal representative of an individual, the agency shall treat the personal representative as the individual with respect to the use and disclosure of his/her protected health information (PHI) as well as individual rights under the Privacy Rules, except as limited by Nebraska Revised Statute, Section 71-5185.

PROCEDURES:

Valid Authorization Form

I.

- A. An authorization must be obtained on the correct form to ensure that it complies with the law. Therefore, the agency shall use the approved Authorization Form at all times. The approved authorization form can be found at Form B.
- B. An authorization form that is signed by the individual's personal representative must state the personal representative's name and the relationship that gives the personal representative authority to act on the individual's behalf.
- C. Upon request, the agency must give the individual (or the personal representative) a copy of the signed authorization form.
- D. A copy of the signed authorization form must be retained by the agency.

II. Defective Authorizations.

An authorization is not valid if it has any of the following defects:

- A. It is not signed or dated;
- B. The expiration date or event has passed;
- C. It is not filled out completely;
- D. It has been revoked;
- E. It violates requirements regarding compound authorizations; or

F. It contains any material information known to be false.

Psychotherapy Notes

III.

An authorization is required for use and disclosure of psychotherapy notes except the agency may use psychotherapy notes without obtaining an individual's authorization to carry out its own treatment, payment or operations as follows:

- A. Use by the originator of the psychotherapy notes for treatment;
- B. Use or disclosure by the agency's own training programs in which students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling; and
- C. Use or disclosure by the agency to defend a legal action or other proceeding brought by the individual.

IV. Authorization Is Not Required

An authorization is NOT required for uses and disclosures for the following purposes:

- A. Treatment, payment and health care operations.
- B. To the individual who is the subject of the information
- C. Required disclosures to the Secretary of Health and Human Services for enforcement of the Privacy Rules;
- D. Required by law.
- E. Public health activities (prevention or control of disease, vital statistics).
- F. Regarding victims of abuse, neglect or domestic violence.
- G. Health oversight activities (licensure, audit, inspections).
- H. Judicial and administrative proceedings (subpoena, discovery requests, or legal process).
- I. Limited law enforcement purposes.
- J. Coroners, Medical Examiners and Funeral Directors regarding decedents.
- K. Organ, eye or tissue donation purposes.
- L. Research purposes.

- M. To avert a serious threat to health or safety.
- N. Specialized government functions (military, veterans' activities, national security, intelligence activities).
- O. Workers' compensation.
- P. Food and Drug Administration.
- Q. Facility Directories, provided the individual was notified in advance of the disclosure and given the opportunity to object to his/her information being used or disclosed in the directory.
- R. Notifying family or friends, and for involving family or friends in the individual's care, provided the individual was given the opportunity to object to such disclosure to family or friends.

Prohibition on Conditioning of Authorizations

V.

The City agency may not condition treatment, payment, enrollment in a health plan, or benefits eligibility on an individual providing it with an authorization except:

- A. The City health plan may condition an individual's enrollment or eligibility for benefits on the individual providing an authorization prior to enrollment in the plan, in certain circumstances.
- B. The City agency may condition the provision of research-related treatment on provision of an authorization for the use or disclosure of PHI for such research.
- C. The City agency may condition the provision of health care that is solely for the purpose of creating PHI for disclosure to a third party on provision of an authorization for the disclosure of PHI to such third party.

VI. Revocation Of An Authorization.

An individual may revoke an Authorization at any time by providing written notice to the City's Privacy Officer or his/her designee. The individual's Authorization is no longer valid once the City knows of the revocation except to the extent the City has already taken action in reliance of the Authorization or to the extent the Authorization was obtained as a condition of obtaining insurance and other law provides the insurer the right to contest the policy or claim under the policy.

Documentation

VII.

The agency must retain any signed authorization and revocation. The documentation must be retained for taken for at least six years from the date it was created or from the date it was last in effect, whichever is later.

Citations:

- §164.506(a) - Discusses the standards for consents and how consents differ from authorizations
- §164.508(a) – Standard for requirements and exceptions for authorizations
- §164.508(b) – Implementation specifications for authorizations
- §164.508(c) – Core elements and requirements
- §164.508(d) – Specifications for an entity’s own uses and disclosure
- §164.508(e) – Specifications for an entity’s disclosure to others
- §164.508(f) – Specifications for research and treatment
- §164.520 – Requirements for plain English language
- §164.512 – Defines the uses and disclosures for which consent, an authorization, or opportunity to agree or object is *not* required
- Preamble, pg. 82509-11 – Discussion of consents and the differences in consent and authorization
- Preamble, pg. 82513-21 – Discussion of authorizations

ACCOUNTING FOR DISCLOSURES

POLICY:

The City agency will keep an accounting of disclosures it makes of patient protected health information (PHI) as required by the Privacy Rules. Some disclosures do not need to be tracked. Individuals have the right to an accounting of the disclosures made of their PHI within the six years prior to their request. Exceptions to this general policy are provided below.

PROCEDURES:

I. Requests For An Accounting of Disclosures

All requests for an Accounting of Disclosures must be submitted in writing using FORM C -- "Accounting of Disclosures Request Form". The form should be forwarded to the Privacy Officer or his/her designee for response.

Individuals may request an accounting of disclosures for a period of up to six years prior to the date of the request. An individual may request an accounting for a shorter period of time. An individual is allowed to request free of charge one accounting within a 12-month period. A reasonable fee can be charged for more frequent accounting requests.

II. Response to Request for Accounting

The agency will respond to the request for an accounting of disclosures within 60 days of the request. If the agency cannot honor an accounting of disclosures within the 60-day period, it must provide information to the requestor as to the reason for the delay and expected completion date. Only one extension of up to thirty (30) days is permitted per request.

The agency will notify the individual of any charges associated with the accounting to ensure that the individual still wants the accounting; coordinate gathering and preparing the disclosure accounting; direct as needed other agencies and business associates to provide disclosure accounting information; and notify the individual when the accounting is ready, requesting payment if charges are due, but otherwise transmitting the disclosure accounting to the individual.

III. Content of Disclosure Tracking Log

The following information shall be tracked on FORM D, "Disclosure Tracking Log"

- Date the disclosure was made;
- A.
- Name of entity or individual the disclosure was made to and their address if
- B.
- known;
- Description of the information disclosed, or, in the alternative, a copy of the
- C.
- authorization form or request which yielded the disclosure;
- Purpose of disclosure; and
- D.
- E. Identity of staff disclosing the information.

IV. Exclusions from Disclosure Accounting

The City is not required to account and track disclosures made:

- A. Prior to April 14, 2003;
- B. To the individual patient (or the individual's personal representative);
- C. To carry out treatment, payment, or health care operations;
- D. Pursuant to a valid authorization;
- E. To or for notification of persons involved in an individual's care of the individual's location, general condition or death;
- F. For national security or intelligence purposes;
- G. To correctional institutions or law enforcement officials regarding inmates;
- H. To assist in disaster relief; or
- I. For facilities' directories.
- J. Incidental uses or disclosures.

V. Disclosures Subject to Accounting

The City agency must track and account for disclosures made:

- A. As required by law;
- B. For public health activities;
- C. About victims of abuse, neglect, or domestic violence;
- E. For health oversight activities;
- F. For organ, eye or tissue donation purposes;
- G. For judicial or administrative proceedings;
- H. For law enforcement purposes;
- I. For research purposes;
- J. For workers' compensation purposes;
- K. To prevent a serious threat to health or safety;
- L. To coroners, medical examiners or funeral directors;
- M. For specialized government functions; and
- N. To the Food & Drug Administration.

VI. Exceptions For Law Enforcement Or Health Oversight Investigations

A temporary suspension of the patient's right to accounting of disclosures is allowed for health oversight agencies or law enforcement officials contingent on the submission to the City agency of a statement that indicates that an accounting of disclosure will impede an investigation that involves the individual in question. The statement should include a time frame for the exclusion period. The statement may be oral but in that case the temporary suspension is limited to 30 days unless appropriate written documentation is submitted within 30 days. Although the accounting of disclosure is not being released during this period, the City agency should continue tracking and storing the information for future release.

VII. Documentation

The “Accounting of Disclosures Request Form,” the “Disclosure Tracking Log,” and any other documents generated in response to an accounting must be maintained by the agency for a period of at least six years from the date it was created or from the date it was last in effect, whichever is later.

Citations:

- §164.508 – Uses and Disclosures for which Authorization is required
- §164.512 – Uses and Disclosures for Which Consent, an Opportunity to Agree or Object is Not Required
- §164.528 – Accounting of Disclosures of PHI
- §164.530 (j) – Documentation Requirements

REQUESTS TO AMEND HEALTH INFORMATION

POLICY:

An individual has the right to request that his/her PHI be amended if he/she feels that the information is incomplete or inaccurate. This right lasts for as long as that information is maintained in the designated record set. Exceptions to this general policy are provided below.

PROCEDURES:

I. Requests to Amend/Correct PHI

All requests to amend or correct PHI must be submitted in writing using FORM E -- "Amendment/Correction of Health Record Request Form". The request must clearly identify the information to be amended or corrected, as well as the reason(s) for the amendment/correction. The form may be filled out by the individual or with the assistance of a staff member.

II. Response to Request for Amendment

The Privacy Officer or his/her designee will act on the individual's request for an amendment no later than sixty (60) days after receipt of such request. The agency may have a one-time extension of thirty (30) days for processing the amendment if the individual is given a written statement of the reason for the delay, and the date by which the amendment request will be processed.

III. Amendment Request Approvals

If the agency accepts the requested amendment, in whole or in part, it must comply with the following requirements:

- A. Make the Amendment.* The agency must make the appropriate amendment to the PHI or record that is the subject of the request for amendment or provide a link to the location of the amendment.
- B. Inform the Individual.* The agency must timely inform the individual that the amendment is accepted and obtain the individual's identification of and agreement to have the agency notify the relevant persons with which the amendment needs to be shared as set forth below.
- C. Inform Others.* The agency must make reasonable efforts to inform and provide the amendment within a reasonable time to:
 1. Persons identified by the individual as having received PHI about the individual and needing the amendment; and
 2. Persons, including business associates, that the agency knows have the PHI that is the subject of the amendment and that may have relied, or could foreseeably rely, on such information to the detriment of the individual.

IV. Amendment Request Denials

The City agency may deny an individual's request for amendment, if it determines that the PHI or record that is the subject of the request:

- A. Was not created by the City agency, unless the individual provides a reasonable basis to believe that the originator of PHI is no longer available to act on the requested amendment;
- B. Is for information that is not part of the designated record set;
- C. Is not accessible to the individual because federal and state law do not permit it (if the City is permitted to deny the individual's request to inspect PHI, it would also be permitted to deny a request to amend the PHI); or
- D. Is already accurate and complete.

V. Denial Requirements

- A. If the City agency denies the requested amendment, in whole or in part, the agency must provide the individual with a timely, written denial in plain language that contains the following:
 - 1. The basis for the denial;
 - 2. The individual's right to submit a written statement disagreeing with the denial and how the individual may file such a statement;
 - 3. A statement that, if the individual does not submit a statement of disagreement, the individual may request that the City agency provide the individual's request for amendment and the denial with any future disclosures of the PHI that is the subject of the amendment;
 - 4. A description of how the individual may complain to the City Privacy Officer pursuant to the complaint procedures or to the Secretary of Health and Human Services; and
 - 5. The name, or title, and telephone number of the contact person for the City, designated to receive complaints.
- B. Statement of Disagreement. The agency must permit the individual to submit a written statement disagreeing with the denial of all or part of a requested amendment and the basis of such disagreement.
- C. Rebuttal Statement. The agency may prepare a written rebuttal to the individual's statement of disagreement. Whenever such a rebuttal is

prepared, the agency must provide a copy to the individual who submitted the statement of disagreement.

- D. If a statement of disagreement has been submitted by the individual, the City agency must include the material appended, or an accurate summary of such information, with any subsequent disclosure of the PHI to which the disagreement relates.
- E. If the individual has not submitted a written statement of disagreement, the agency must include the individual's request for amendment and its denial, or an accurate summary of such information, with any subsequent disclosure of the PHI only if the individual has requested such action.
- F. The agency must, as appropriate, identify the record or PHI in the designated record set that is the subject of any disputed amendment and append or otherwise link the individual's request for an amendment, the agency's denial of the request, the individual's statement of disagreement, if any, and the agency's rebuttal, if any, to the designated record set.
- G. When a subsequent disclosure described above is made using a standard transaction that does not permit the additional material to be included, the agency must separately transmit the material required to the recipient of the standard transaction.

VI. Amendments and Business Associates

- A. The agency will determine each business associate that has the PHI subject to the amendment and who may have relied or may foreseeably rely on the unamended information to the individual's detriment.
- B. The agency will obtain all authorizations from the individual needed to notify these persons or entities, as well as each person and entity that the individual identifies as needing notification.

VII. Receipt of Amendment Notice.

The City agency must amend PHI or records in its designated record sets on receipt of notice from another covered entity that the information has been amended. The agency will coordinate amendment of PHI or records in its designated record sets upon receipt of such notice.

VIII. Documentation

The agency must document the identity of the staff responsible for receiving and processing requests for amendments and any communications requesting, granting or denying the amendment. Such documentation shall be retained by the agency for at least six years from the date it was created or from the date it was last in effect, whichever is later.

Citations:

- §164.526 – Amendment of PHI
- §164.524(a)(2)&(3) – Unreviewable and reviewable grounds for denial
- Preamble, pg. 82558 – Amendment of PHI

REQUESTS TO RESTRICT USE AND DISCLOSURES OF PATIENT HEALTH INFORMATION

POLICY:

An individual has the right to request a City agency to restrict uses and disclosures of PHI when carrying out treatment, payment or health care operations. However, the City agency is not required to agree to the individual's request for restrictions.

PROCEDURES:

Restriction Request

I.

Where possible, all requests for restrictions shall be submitted in writing on FORM F – “Restriction of Use and Disclosure Form”. The request must include: a description of the information to be limited; whether the request is to limit the use, disclosure or both; and to whom the limitation should apply.

Restriction Response

II.

All requests should be forwarded to the Privacy Officer or his/her designee for determination and response. The agency will notify the individual in writing whether or not the request will be granted.

III. Granting A Restriction

If a restriction is granted, the agency will notify the management of each affected department and those business associates who are affected by the agreement. Affected management and business associates must ensure that their workforce members are informed of the restrictions and implement procedures to prevent any use or disclosure contrary to an agreement to these restrictions.

IV. Medical Emergencies

The City agency may use restricted PHI or disclose it to a health care provider, notwithstanding a restriction agreement, when the information is needed for treatment of an individual in a medical emergency. In the event an agency employee uses or discloses the restricted PHI in a medical emergency situation:

- A. Staff must document justification for the determination, whether it resulted in withholding, using or disclosing the restricted PHI.
- B. Staff must request the other parties involved not to further use or disclose the restricted information. and document this request.

V. Termination of Restriction Agreements

The City agency may terminate an agreement restricting use or disclosure of PHI by the concurrence of the individual or unilaterally by written notice of termination to the individual. Unilateral termination is only effective with respect to protected health information created or received after the individual has been informed of the unilateral termination of the restriction.

VI. Documentation

The agency must document any agreed upon restriction, any notice to business associates or others and any written or oral agreement to terminate a restriction for at least six years from the earlier of (1) the date it was created or (2) the date when it was last in effect.

Citations:

- §164.522(a) – Rights to request privacy protection for protected health information – Standard: right of an individual to request restriction of uses and disclosures.
- Preamble, pg. 82552-3 – Discussion of §164.522(a)
- Preamble, pg. 82726-30 – Discussion of comments regarding §164.522(a)

REQUESTS FOR CONFIDENTIAL COMMUNICATIONS

POLICY:

An individual may request to receive confidential communications from the City agency either at an alternative location or by alternative means. For example, an individual may request to receive all written communications from the City at a work address rather than a home address. The agency will accommodate reasonable requests.

PROCEDURES:

I. Requests for Confidential Communication

All requests shall be made in writing using Form G — “Request for Confidential Communication Form”. The request shall clearly state the alternative means of disclosure requested.

II. Response to Request

A request will be granted provided it is reasonable. Reasonableness will be based upon the administrative difficulty with complying with the request. The agency shall respond to the request in writing. If the request is granted, the agency shall notify all affected departments and business associates in writing of any decision to accommodate.

III. Accommodation

Each department within an agency will establish a procedure so all employees who are engaging in communications with the individual can accommodate a request that has been granted.

IV. Documentation

The agency shall retain all documentation concerning a request defined herein for at least six years from the earlier of (1) the date it was created or (2) the date when it was last in effect.

Citations:

- 164.522(b) Rights to protect privacy protection for PHI.
- 164.502(h) Uses and disclosures of PHI.

BUSINESS ASSOCIATES

POLICY:

A business associate is an individual or entity who provides a service, performs a function or performs an activity on behalf of a covered component of the City that involves the creation, use, or disclosure of protected health information. Business Associates do not include members of the City's workforce. A City agency may disclose protected health information (PHI) to a business associate provided a business associate contract (BAC) exists, or if the BAC requirement has been extended.

PROCEDURES:

I. Business Associate Contract

The business associate must provide in writing satisfactory assurances that it will appropriately safeguard the information it receives, uses or discloses in carrying out the specified functions or activities. The satisfactory assurances obtained from the business associate shall be in the form of a written BAC that contains the elements specified in the Privacy Rule.

II. Business Associate

A. The City's Responsibility Regarding Business Associates

If the City knows of a material breach or violation by the business associate of the contract or agreement, the City is required to take reasonable steps to cure the breach or end the violation, and if such steps are unsuccessful, to terminate the contract or arrangement. If termination of the contract or arrangement is not feasible, the City is required to report the problem to the Secretary of Health and Human Services.

Employees shall immediately notify the Privacy Officer if they learn that one of the City's business associates may have breached or violated its BAC.

B. Minimum Necessary Standard

The Privacy Rules require covered entities to obligate their business associates to comply with the minimum necessary standard.

Citations:

- §160.103 Definition of "business associate"
- §164.504(e)(1)(ii)(A) Requirements for disclosures to associates
- §164.504(e)(1)(ii)(B) Exception for disclosures to group plan sponsor
- §164.504(e)(2) Contents of associate contracts
- §164.504(e)(1)(ii) Responsibility for associate's activities

MINIMUM NECESSARY

POLICY:

City agencies must take reasonable efforts to use, disclose, or request of another covered entity, only the minimum necessary PHI to accomplish the intended purpose. Exceptions to this general rule are provided herein.

PROCEDURES:

I. Minimum Necessary Workforce Use

The agency shall identify and document those workforce members (or classes of workforce members) who need access to PHI to perform their duties; the categories of PHI needed by each of these workforce members (or classes of these workforce members) to perform those duties; and the conditions appropriate to each workforce member's access to those categories.

Each Agency Head will implement procedures to ensure that each workforce member (or class of workforce members) within the agency, has access to and use of only that PHI consistent with these identified and documented needs.

Routine and Non-Routine Disclosures

II.

The agency shall implement policies and procedures or standard protocols for the routine or recurring requests for or disclosures of PHI (other than those for which there is no minimum necessary requirement) so that the agency limits the PHI it requests or discloses to the minimum reasonably necessary for the purpose of the request or disclosure.

For any request for or disclosure of PHI that has not been identified and documented as routine or recurring (and that is not excepted from the minimum necessary requirement), the agency must have and apply criteria designed to limit the PHI it requests or discloses to that reasonably necessary for the purpose of the request or disclosure. The agency should review each non-routine or non-recurring request or disclosure on an individual basis according to these criteria to ensure that it requests or discloses only the minimum necessary PHI.

III. Medical Records

The agency may not use, disclose, or request an entire medical record, unless it is specifically justified as reasonably necessary for the purpose. The Privacy Officer and agency may identify and document those situations in which use, disclosure or request for an entire medical record may be justifiable and will develop and document procedures for obtaining approval to use, disclose or request an entire medical record. Each agency will implement these procedures within the unit to ensure that an entire medical record is not used, disclosed or requested without approved justification.

IV. Exceptions to Minimum Necessary Requirement

- A. Disclosures to or requests by a health care provider for treatment purposes.
- B. Disclosures made to the individual (or the individual's personal representative) who is the subject of the PHI.
- C. Uses or disclosures made pursuant to a valid authorization.
- D. Disclosures to HHS for compliance reviews or complaint investigations under HIPAA.
- E. Uses or disclosures required for compliance with the HIPAA.
- F. Uses or disclosures required by law.

V. Reliance on Minimum Necessary Assurances

The City agency may rely, if reasonable for the situation, on a request to disclose PHI being for the minimum necessary, if the requester is another covered entity; a professional (including an attorney or accountant) who provides professional services to the City, either as a member of our workforce or as our business associate, and who states that the requested information is the minimum necessary; a public official who represents that the information requested is the minimum necessary; or a researcher with appropriate documentation from an Institutional Review Board (IRB) or Privacy Board.

Citations:

- §164.502(b) – Uses and disclosures of protected health information: General rules – Standard: minimum necessary
- §164.514(d) – Other requirements relating to uses and disclosures of protected health information: Standard – minimum necessary requirements
- Preamble, pg. 82499 and 82712 – 82716 – Discussion of comments on Minimum Necessary
- Preamble, pg. 82543- 45 – Discussion of Minimum Necessary

VERIFICATION OF INDIVIDUAL'S IDENTITY

POLICY:

Before making any permitted disclosures of PHI, the City agency shall verify the identity and authority of the person requesting the PHI. If the agency knows the person making the request, additional verification of his/her identity is not required.

PROCEDURES:

1. Verifying an Individual's Identity

The City agency must take reasonable steps to verify the identity of an individual requesting access, use or disclosure of his/her PHI when the person is not known to them. No particular identification requirements are mandated. Examples of appropriate identification include photographic identification card, drivers license, photo ID, government identification card or badge, and appropriate documentation on government letterhead. Current practices of sending the information to a recognizable organizational address or, if faxing or phoning information, by calling the requester back through the main organization switchboard rather than through a direct phone number, are sufficient to meet these requirements.

II. Verifying the Identity and Authority of a Person Who Requests PHI on Behalf of an Individual

The City agency must take reasonable steps to verify the identity and authority of any person requesting PHI on behalf of another individual. Examples of appropriate authority include, if reasonable for the situation, identification as parent, guardian, or executor, power of attorney, or other evidence of appropriate relationship with the individual, a warrant, subpoena, order or other legal process issued by a grand jury or a court or administrative tribunal.

Documentation

III.

The agency staff shall document verification of the identity and authority of a person or entity before granting access to or disclosing PHI.

Citations

- §164.514(h) – Other Procedural Requirements Relating to Uses and Disclosures of Protected Health Information – Standard: Verification requirements
- Preamble, pg. 82546-7 and pg. 82718-20 – Discussion of verification of identity and authority of persons requesting PHI

PRIVACY COMPLAINTS AND INQUIRIES

POLICY:

Individuals (both internal and external to the City of Lincoln) have the right to file a complaint regarding the City's Privacy Policies and Procedures or the Privacy Rules. Individuals have the right to file the complaint either directly to the City Privacy Officer or to the Secretary of Health and Human Services.

The City must cooperate with investigations by the Secretary of Health and Human Services permitting access to information requested by the investigator. The City must receive and document complaints and their disposition, if any, and retain these records for six years.

PROCEDURES:

External Privacy Complaints and Inquiries

I.

Each complaint received by an outside agency or individual (not an employee of the City) must be documented and referred immediately to the City Privacy Officer for investigation.

A. *Complaints.* All complaints shall be submitted in writing to the Privacy Officer.

B. *Investigation and Response.* The Privacy Officer will facilitate an investigation into each complaint. Any response to the complaint shall be in writing and within thirty (30) days of receiving the complaint. The Privacy Officer shall institute action to correct the matters complained of if corrective action is appropriate.

Internal Privacy Complaints and Inquiries

II.

A member of the City workforce who suspects that these Privacy Policies and Procedures, the Privacy Rules or other applicable federal or state privacy law has been violated by another workforce member or by a business associate must report the suspicion to the City Privacy Officer in sufficient detail to permit the matter to be investigated and to prevent or mitigate any deleterious effects. Reports may be made anonymously.

III. Sanctions

City employees who violate our Privacy Policies and Procedures, the Privacy Rules or other applicable federal or state privacy law will be subject to disciplinary action, up to and including termination.

IV. Mitigation

The City will mitigate, to the extent reasonable and possible, any harmful effect of improper use or disclosure of protected health information (PHI) by our workforce or by our business associates in violation of these Privacy Policies and Procedures, the Privacy Rules or other applicable federal or state privacy law.

V. Policy Refraining from Waivers and Retaliatory Acts

The City will not require an individual to waive any right under the Privacy Rules, including the right to complain to HHS, as a condition to providing claims payment, enrollment, or benefits eligibility for the individual. Any City employee who attempts to intimidate, threaten, coerce, discriminate, or retaliate against an individual who exercises any right, including filing complaints, under the Privacy Rules, will be disciplined as appropriate.

VI. Documentation

The City Privacy Officer shall retain copies of all complaints, investigations, responses and documentation of any action taken for at least six years from the date it was created or from the date it was last in effect, whichever is later.

Citations:

- §160.306 – Complaints to the Secretary
- §160.310 (b) – Responsibilities of covered entities to cooperate with complaint investigations and compliance review
- §160.312 – Secretarial action regarding complaints and compliance reviews
- §164.530 (d) – Administrative requirements – Standard: Complaints to the covered entity
- §164.530 (a)(1)(ii) – Administrative requirements – Standard: Personnel designations
- §164.530 (g) – Administrative requirements – Standard: Refraining from intimidating or retaliatory action
- §164.520 (b)(vi) – Notice of privacy practices – Complaints
- §164.524 (d)(2)(iii) – Access of individuals to protected health information – Implementation specifications: Denial of access
- §164.526 (d)(iv) – Amendment of protected health information – Implementation specifications: Denial of amendment
- Preamble, pg. 82487 – Process of filing a complaint
- Preamble, pg. 82505 – Complaints against a business associate
- Preamble, pg. 82550 – Complaints about privacy practices
- Preamble, pg. 82556-7 – Review of a Denial of Access
- Preamble, pg. 82562 – Complaints to the Covered Entity
- Preamble, pg. 82600-1 – Process for filing complaints
- Preamble, pg. 82746-7 – Complaints to the Covered Entity and retention of complaint records, staffing requirements
- Preamble, p. 82783– Internal Complaints – Receiving, Documenting and Responding to Complaint

HIPAA DOCUMENTATION AND RECORD RETENTION

POLICY:

The City of Lincoln must document and maintain all HIPAA policies and procedures and any other communication, action, activity, or designation that must be documented under the Privacy Rule. Documentation may be maintained in electronic form or on paper.

PROCEDURES:

I. Documentation

The City Privacy Officer will maintain, or cause to be maintained, the following in written or electronic form:

- City Privacy Policies and Procedures, and approved forms, and each revision to same,
- City Notices of Privacy Practices and each revision to same,
- Documentation evidencing distribution of the Notices and each revision to same,
- Documentation evidencing designation of the City Privacy Officer and any delegation of duties and responsibilities to the Privacy Official's designees,
- Each authorization,
- Each request from individuals for access, amendment, disclosure accounting, restriction or confidential communications and all documentation relating to them,
- Each complaint and any material generated as a result of investigating and resolving the complaint, and
- Other documentation requested or required under these Privacy Policies and Procedures.

Document Retention

III.

Each document shall be retained until six (6) years after the later of its creation or last effective date.

Each agency will implement document retention practices within the agency consistent with these Privacy Policies and Procedures to ensure that the Privacy Officer, or his/her designee, receives the original of each document required by these Privacy Policies and Procedures.

Each agency shall retain a copy of each such document as may meet the department's needs or convenience in performing its functions for the City.

IV. Changes in the Law

The City must promptly amend these Privacy Policies and Procedures as necessary and appropriate to comply with each change in the Privacy Rules or applicable federal or state privacy law.

The City must promptly make appropriate revisions to its Notice of Privacy Practices whenever the change in law materially affects the accuracy of the Notice's content, and distribute our revised Notice to our then subscribers and enrollees within 60 days after the effective date of the change in law.

Citations:

- §164.508 - Uses and disclosures for which an authorization is required
- §164.512(i) - Uses and Disclosures for Research Purposes: Documentation Requirements of IRB
- §164.520(e) - Notice of Privacy Practices for protected health information – Implementation specifications: documentation
- §164.522 - Rights to request privacy protection for protected health information
- §164.524(e) - Access of individuals to protected health information – Implementation specification: documentation
- §164.526(f) - Amendment of protected health information – Implementation specification: documentation
- §164.528(d) - Accounting of disclosures of protected health information – Implementation specification: documentation
- §164.530(j) - Administrative requirements – Standard: documentation
- Preamble, pg. 82498 – Each entity must assess its own needs
- Preamble, pg. 82517 – Items required in Authorization Requests
- Preamble, pg. 82535-6 – Documentation Requirements of Internal Review Board

Definition of Terms

Agency:

A City of Lincoln department, division, or agency, or portion thereof, that has been designated as a covered health care component of the City subject to HIPAA and these policies, rules and procedures.

Administrative Requirements:

Covered entities must fulfill these requirements under the Privacy rule. They include designating a Privacy Official, designating a contact person responsible for receiving complaints, instituting and documenting policies and procedures to comply with the Privacy rule, training employees on the entity's PHI policies and procedures, implementing appropriate administrative, technical and physical safeguards to protect privacy of PHI, providing a process for individuals to make complaints concerning the policies/practices, applying sanctions against workers who violate privacy policies, and mitigating any known harmful effect resulting from a violation of policies/practices

Business associate:

- (1) Except as provided in paragraph (2) of this definition, business associate means, with respect to a covered entity, a person who:
 - (i) On behalf of such covered entity or of an organized health care arrangement in which the covered entity participates, but other than in the capacity of a member of the workforce of such covered entity or arrangement, performs, or assists in the performance of:
 - (A) A function or activity involving the use or disclosure of individually identifiable health information, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, benefit management, practice management, and repricing; or
 - (B) Any other function or activity regulated by this subchapter; or
 - (ii) Provides, other than in the capacity of a member of the workforce of such covered entity, legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services to or for such covered entity, or to or for an organized health care arrangement in which the covered entity participates, where the provision of the service involves the disclosure of individually identifiable health information from such covered entity or arrangement, or from another business associate of such covered entity or arrangement, to the person.
- (2) A covered entity participating in an organized health care arrangement that performs a function or activity as described by paragraph (1)(i) of this definition for or on behalf of such organized health care arrangement, or that provides a service as described in paragraph (1)(ii) of this definition to or for such organized health care arrangement, does not, simply through the performance of such function or activity or the provision of such service, become a business associate of other covered entities participating in such organized health care arrangement.
- (3) A covered entity may be a business associate of another covered entity.

Compliance date:

the date by which a covered entity must comply with a standard, implementation specification, requirement, or modification adopted under this subchapter which is,

generally, April 14, 2003. The date by which the City's "small health plan(s)" must comply is April 14, 2004.

Covered entity:

- (1) A health plan.
- (2) A health care clearinghouse.
- (3) A health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter.

Data aggregation:

With respect to protected health information created or received by a business associate in its capacity as the business associate of a covered entity, the combining of such protected health information by the business associate with the protected health information received by the business associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

Designated record set:

- (1) A group of records maintained by or for a covered entity that is:
 - (i) The medical records and billing records about individuals maintained by or for a covered health care provider;
 - (ii) The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or
 - (iii) Used, in whole or in part, by or for the covered entity to make decisions about individuals.
- (2) For purposes of this paragraph, the term *record* means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for a covered entity.

Disclosure:

the release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the information.

Group health plan (also see definition of health plan in this section):

an employee welfare benefit plan (as defined in section 3(1) of the Employee Retirement Income and Security Act of 1974 (ERISA), 29 U.S.C. 1002(1)), including insured and self-insured plans, to the extent that the plan provides medical care (as defined in section 2791(a)(2) of the Public Health Service Act (PHS Act), 42 U.S.C. 300gg-91(a)(2)), including items and services paid for as medical care, to employees or their dependents directly or through insurance, reimbursement, or otherwise, that:

- (1) Has 50 or more participants (as defined in section 3(7) of ERISA, 29 U.S.C. 1002(7)); or
- (2) Is administered by an entity other than the employer that established and maintains the plan.

Health care:

care, services, or supplies related to the health of an individual. *Health care* includes, but is not limited to, the following:

- (1) Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body; and
- (2) Sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.

Health care clearinghouse:

a public or private entity, including a billing service, repricing company, community health management information system or community health information system, and “value-added” networks and switches, that does either of the following functions:

- (1) Processes or facilitates the processing of health information received from another entity in a nonstandard format or containing nonstandard data content into standard data elements or a standard transaction.
- (2) Receives a standard transaction from another entity and processes or facilitates the processing of health information into nonstandard format or nonstandard data content for the receiving entity.

Health care operations:

any of the following activities of the covered entity to the extent that the activities are related to covered functions, and any of the following activities of an organized health care arrangement in which the covered entity participates:

- (1) Conducting quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines, provided that the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from such activities; population-based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment;
- (2) Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, health plan performance, conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers, training of non-health care professionals, accreditation, certification, licensing, or credentialing activities;
- (3) Underwriting, premium rating, and other activities relating to the creation, renewal or replacement of a contract of health insurance or health benefits, and ceding, securing, or placing a contract for reinsurance of risk relating to claims for health care (including stop-loss insurance and excess of loss insurance), provided that the requirements of § 164.514(g) are met, if applicable;
- (4) Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs;
- (5) Business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating the entity, including formulary development and administration, development or improvement of methods of payment or coverage policies; and

- (6) Business management and general administrative activities of the entity, including, but not limited to:
- (i) Management activities relating to implementation of and compliance with the requirements of this subchapter;
 - (ii) Customer service, including the provision of data analyses for policy holders, plan sponsors, or other customers, provided that protected health information is not disclosed to such policy holder, plan sponsor, or customer.
 - (iii) Resolution of internal grievances;
 - (iv) Due diligence in connection with the sale or transfer of assets to a potential successor in interest, if the potential successor in interest is a covered entity or, following completion of the sale or transfer, will become a covered entity; and
 - (v) Consistent with the applicable requirements of § 164.514, creating de-identified health information, fundraising for the benefit of the covered entity, and marketing for which an individual authorization is not required as described in § 164.514(e)(2).

Health information:

any information, whether oral or recorded in any form or medium, that:

- (1) Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and
- (2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.

Health plan:

an individual or group plan that provides, or pays the cost of, medical care (as defined in section 2791(a)(2) of the PHS Act, 42 U.S.C. 300gg- 91(a)(2)).

- (1) *Health plan* includes the following, singly or in combination:
 - (i) A group health plan, as defined in this section.
 - (ii) A health insurance issuer, as defined in this section.
 - (iii) An HMO, as defined in this section.
 - (iv) Part A or Part B of the Medicare program under title XVIII of the Act.
 - (v) The Medicaid program under title XIX of the Act, 42 U.S.C. 1396, et seq.
 - (vi) An issuer of a Medicare supplemental policy (as defined in section 1882(g)(1) of the Act, 42 U.S.C. 1395ss(g)(1)).
 - (vii) An issuer of a long-term care policy, excluding a nursing home fixed-indemnity policy.
 - (viii) An employee welfare benefit plan or any other arrangement that is established or maintained for the purpose of offering or providing health benefits to the employees of two or more employers.
 - (ix) The health care program for active military personnel under title 10 of the United States Code.
 - (x) The veterans health care program under 38 U.S.C. chapter 17.
 - (xi) The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)(as defined in 10 U.S.C. 1072(4)).
 - (xii) The Indian Health Service program under the Indian Health Care Improvement Act, 25 U.S.C. 1601, et seq.

- (xiii) The Federal Employees Health Benefits Program under 5 U.S.C. 8902, et seq.
 - (xiv) An approved State child health plan under title XXI of the Act, providing benefits for child health assistance that meet the requirements of section 2103 of the Act, 42 U.S.C. 1397, et seq.
 - (xv) The Medicare + Choice program under Part C of title XVIII of the Act, 42 U.S.C. 1395w-21 through 1395w-28.
 - (xvi) A high risk pool that is a mechanism established under State law to provide health insurance coverage or comparable coverage to eligible individuals.
 - (xvii) Any other individual or group plan, or combination of individual or group plans, that provides or pays for the cost of medical care (as defined in section 2791(a)(2) of the PHS Act, 42 U.S.C. 300gg-91(a)(2)).
- (2) Health plan excludes:
- (i) Any policy, plan, or program to the extent that it provides, or pays for the cost of, excepted benefits that are listed in section 2791(c)(1) of the PHS Act, 42 U.S.C. 300gg-91(c)(1); and
 - (ii) A government-funded program (other than one listed in paragraph (1)(i)-(xvi) of this definition):
 - (A) Whose principal purpose is other than providing, or paying the cost of, health care; or
 - (B) Whose principal activity is:
 - (1) The direct provision of health care to persons; or
 - (2) The making of grants to fund the direct provision of health care to persons.

Health care provider:

a provider of services (as defined in section 1861(u) of the Act, 42 U.S.C. 1395x(u)), a provider of medical or health services (as defined in section 1861(s) of the Act, 42 U.S.C. 1395x(s)), and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business.

HHS stands for the Department of Health and Human Services.

Individual:

the person who is the subject of protected health information.

Individually identifiable health information:

is information that is a subset of health information, including demographic information collected from an individual, and:

- (1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
- (2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
 - (i) That identifies the individual; or
 - (ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Law enforcement official:

an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to:

- (1) Investigate or conduct an official inquiry into a potential violation of law; or
- (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.

Marketing:

- (1) To make a communication about a product or service that encourages recipients of the communication to purchase or use the product or service, unless the communication is made:
 - (i) To describe a health-related product or service (or payment for such product or service) that is provided by, or included in a plan of benefits of, the covered entity making the communication, including communications about: the entities participating in a health care provider network or health plan network; replacement of, or enhancements to, a health plan; and health-related products or services available only to a health plan enrollee that add value to, but are not part of, a plan of benefits.
 - (ii) For treatment of the individual; or
 - (iii) For case management or care coordination for the individual, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to the individual.
- (2) An arrangement between a covered entity and any other entity whereby the covered entity discloses PHI to the other entity, in exchange for direct or indirect remuneration, for the other entity or its affiliate to make a communication about its own product or service that encourages recipients of the communication to purchase or use that product or service.

More stringent;

in the context of a comparison of a provision of State law and a standard, requirement, or implementation specification adopted under subpart E of part 164 of this subchapter, a State law that meets one or more of the following criteria:

- (1) With respect to a use or disclosure, the law prohibits or restricts a use or disclosure in circumstances under which such use or disclosure otherwise would be permitted under this subchapter, except if the disclosure is:
 - (i) Required by the Secretary in connection with determining whether a covered entity is in compliance with this subchapter; or
 - (ii) To the individual who is the subject of the individually identifiable health information.
- (2) With respect to the rights of an individual, who is the subject of the individually identifiable health information, regarding amendment of individually identifiable health information, permits greater rights of access or amendment, as applicable.
- (3) With respect to information to be provided to an individual who is the subject of the individually identifiable health information about a use, a disclosure, rights, and remedies, provides the greater amount of information.
- (4) With respect to the form, substance, or the need for express legal permission from an individual, who is the subject of the individually identifiable health information, for use or disclosure of individually identifiable health information, provides requirements that narrow the scope or duration, increase the privacy

- protections afforded (such as by expanding the criteria for), or reduce the coercive effect of the circumstances surrounding express legal permission, as applicable.
- (5) With respect to record keeping or requirements relating to accounting of disclosures, provides for the retention or reporting of more detailed information or for a longer duration.
 - (6) With respect to any other matter, provides greater privacy protection for the individual who is the subject of the individually identifiable health information.

Organized health care arrangement:

- (1) A clinically integrated care setting in which individuals typically receive health care from more than one health care provider;
- (2) An organized system of health care in which more than one covered entity participates, and in which the participating covered entities:
 - (i) Hold themselves out to the public as participating in a joint arrangement; and
 - (ii) Participate in joint activities that include at least one of the following:
 - (A) Utilization review, in which health care decisions by participating covered entities are reviewed by other participating covered entities or by a third party on their behalf;
 - (B) Quality assessment and improvement activities, in which treatment provided by participating covered entities is assessed by other participating covered entities or by a third party on their behalf; or
 - (C) Payment activities, if the financial risk for delivering health care is shared, in part or in whole, by participating covered entities through the joint arrangement and if protected health information created or received by a covered entity is reviewed by other participating covered entities or by a third party on their behalf for the purpose of administering the sharing of financial risk.
- (3) A group health plan and a health insurance issuer or HMO with respect to such group health plan, but only with respect to protected health information created or received by such health insurance issuer or HMO that relates to individuals who are or who have been participants or beneficiaries in such group health plan;
- (4) A group health plan and one or more other group health plans each of which are maintained by the same plan sponsor; or
- (5) The group health plans described in paragraph (4) of this definition and health insurance issuers or HMOs with respect to such group health plans, but only with respect to protected health information created or received by such health insurance issuers or HMOs that relates to individuals who are or have been participants or beneficiaries in any of such group health plans.

Payment:

- (1) The activities undertaken by:
 - (i) A health plan to obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits under the health plan; or
 - (ii) A health care provider or health plan to obtain or provide reimbursement for the provision of health care; and
- (2) The activities in paragraph (1) of this definition relate to the individual to whom health care is provided and include, but are not limited to:

- (i) Determinations of eligibility or coverage (including coordination of benefits or the determination of cost sharing amounts), and adjudication or subrogation of health benefit claims;
- (ii) Risk adjusting amounts due based on enrollee health status and demographic characteristics;
- (iii) Billing, claims management, collection activities, obtaining payment under a contract for reinsurance (including stop-loss insurance and excess of loss insurance), and related health care data processing;
- (iv) Review of health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges;
- (v) Utilization review activities, including precertification and preauthorization of services, concurrent and retrospective review of services; and
- (vi) Disclosure to consumer reporting agencies of any of the following protected health information relating to collection of premiums or reimbursement:
 - (A) Name and address;
 - (B) Date of birth;
 - (C) Social security number;
 - (D) Payment history;
 - (E) Account number; and
 - (F) Name and address of the health care provider and/or health plan.

Plan administration functions:

administration functions performed by the plan sponsor of a group health plan on behalf of the group health plan and excludes functions performed by the plan sponsor in connection with any other benefit or benefit plan of the plan sponsor.

Plan sponsor is defined as defined at section 3(16)(B) of ERISA, 29 U.S.C. 1002(16)(B).

Protected health information means individually identifiable health information:

- (1) Except as provided in paragraph (2) of this definition, that is:
 - (i) Transmitted by electronic media;
 - (ii) Maintained in any medium described in the definition of *electronic media* at § 162.103 of this subchapter; or
 - (iii) Transmitted or maintained in any other form or medium.
- (2) *Protected health information* excludes individually identifiable health information in:
 - (i) Education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. 1232g;
 - (ii) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); and
 - (iii) Employment records held by a covered entity in its role as employer.

Psychotherapy notes:

notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual's medical record. *Psychotherapy notes* excludes medication prescription and monitoring, counseling session start and stop times, the

modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

Public health authority:

an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate.

Required by law:

a mandate contained in law that compels a covered entity to make a use or disclosure of protected health information and that is enforceable in a court of law. *Required by law* includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.

Research:

a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge.

Secretary:

The Secretary of Health and Human Services or any other officer or employee of HHS to whom the authority involved has been delegated.

Standard:

a rule, condition, or requirement:

- (1) Describing the following information for products, systems, services or practices:
 - (i) Classification of components.
 - (ii) Specification of materials, performance, or operations; or
 - (iii) Delineation of procedures; or
- (2) With respect to the privacy of individually identifiable health information.

Summary health information:

information, that may be individually identifiable health information, and:

- (1) That summarizes the claims history, claims expenses, or type of claims experienced by individuals for whom a plan sponsor has provided health benefits under a group health plan; and
- (2) From which the information described at § 164.514(b)(2)(i) has been deleted, except that the geographic information described in § 164.514(b)(2)(i)(B) need only be aggregated to the level of a five digit zip code.

Treatment:

the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another.

Use:

means, with respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

Workforce:

employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a covered entity, is under the direct control of such entity, whether or not they are paid by the covered entity.

PERSONAL REPRESENTATIVES

POLICY:

Except as otherwise provided herein, upon verification that an individual has been authorized to act as the personal representative of an individual, the City agency shall treat the personal representative as the individual with respect to the use and disclosure of his/her protected health information (PHI) as well as individual rights under the Privacy Rules.

PROCEDURES:

I. Personal Representatives Access to PHI

A. Mandatory Disclosure

When a personal representative asks the City agency for access to information or an accounting of disclosures, the City agency must disclose this information unless an exception to disclosure exists.

B. Adults and Emancipated Minors

If a person has authority to act on behalf of an individual who is an adult or an emancipated minor in making decisions related to health care, the agency must treat such person as a personal representative with respect to PHI relevant to such personal representation unless an exception to disclosure exists.

C. Unemancipated Minors

If a parent, guardian, or other person acting in the place of a parent has authority to act on behalf of an individual who is an unemancipated minor in making decisions related to health care, the agency must treat such person as a personal representative, with respect to PHI relevant to such personal representation subject to the following exceptions.

1. When State or other law, does not require the consent of the parent before a minor can obtain a particular health care service and the minor consents to the health care service;
2. When a court determines or other law authorizes someone other than the parent to make the treatment decision for the minor; or
3. A parent, guardian, or other person acting in the place of a parent agrees to an agreement of confidentiality between a health care provider and the minor.

II. Deceased Individuals

If under applicable law an executor, administrator, or other person has authority to act on behalf of a deceased individual or of the individual's estate, the City

agency must treat such person as a personal representative, with respect to PHI relevant to such personal representation.

III. Abuse, Neglect, Endangerment Situations

The City agency may decide not to treat a person as the personal representative of an individual if it has a reasonable belief that:

- A. The individual has been or may be subjected to domestic violence, abuse, or neglect by such person; or
- B. Treating such person as the personal representative could endanger the individual and the City agency, in the exercise of professional judgment, decides that it is not in the best interest of the individual to treat the person as the individual's personal representative.

Citations:

- §164.502(g) – Uses and disclosures of protected health information: general rules – Standard: personal representatives
- §164.524 – Access of individuals to protected health information
- §164.528 – Accounting of disclosures of protected health information
- §164.510(b) – Uses and disclosures requiring an opportunity for the individual to agree or to object – Standard: uses and disclosures for involvement in the individual's care and notification purposes
- Preamble, pg. 82500 and 82633 - 82634 – Discussion of §164.502(g)
- Preamble, pg. 82544 and 82731 – Discussion of §164.524
- Preamble, pg. 82599 and 82739 – Discussion of §164.528
- Preamble, pg. 82522 and 82633 – Discussion of §164.510(b)

SUBPOENAS

POLICY:

Except as otherwise limited by State law, a City agency may disclose PHI pursuant to subpoenas, discovery requests, or other civil process only after obtaining “satisfactory assurances” that the requesting party has made a reasonable effort to provide written notice of the request to the individual or to obtain a “qualified protection order.”

Disclosures pursuant to subpoenas, discovery requests, or other civil process are subject to the “minimum necessary” standard.

PROCEDURES:

I. Response to Subpoenas and Discovery Requests

The City Attorney’s Office shall be contacted immediately upon being served with a subpoena, search warrant, discovery request or other civil process. The City Attorney’s Office will coordinate a response to the document. This includes subpoenas or summons to testify, as well as subpoenas or other discovery requests for documents.

II. Satisfactory Assurances

Satisfactory Assurances means a written declaration and documentation of the following:

- A. A good faith effort to provide the individual with written notice sufficient to permit the individual to raise objections to the disclosure of his/her PHI;
- B. The individual’s failure to raise a timely objection following notice; or
- C. The resolution of the individual’s objection by the court or other tribunal.

The written assurances will be deemed satisfactory under the regulations if, together with accompanying documentation they demonstrate that the parties agreed to or are seeking a qualified protection order from a court.

III. Qualified Protection Order

A “qualified protection order” is an order or stipulation by the parties to the action prohibiting the parties from using or disclosing the health information for any purpose other than the case or proceeding for which it was requested.

DISCLOSURES TO LAW ENFORCEMENT OFFICIALS

POLICY:

A City agency may disclose an individual's PHI to law enforcement officials without the individual's authorization only in specific circumstances. "Law enforcement" includes any governmental agency or official authorized to investigate, prosecute or conduct an inquiry into a potential violation of law.

PROCEDURES:

I. Requests for PHI by Law Enforcement Agencies Outside the City

When possible, all requests for PHI by law enforcement shall be in writing and shall include appropriate documentation. All disclosures of PHI made to law enforcement shall be documented. The City agency shall use reasonable means to confirm the identity and authority of the law enforcement official requesting the disclosure of information.

II. Circumstances Permitting Disclosure to Law Enforcement

- A. Legal Process.* Except as may be restricted by State law, the City agency may disclose PHI to law enforcement officials pursuant to legal process. Legal process is a formal written demand or request from a judicial or enforcement agency. It includes documents such as a court order, a court-ordered warrant, a subpoena or summons issued by a court officer, a grand jury subpoena or an administrative subpoena.
- B. Required By Law.* Except as may be restricted by State law the City agency may disclose PHI to law enforcement where the disclosure is required by state or federal laws. For example, the agency may be required to report child or vulnerable adult abuse or neglect.
- C. For Identification or Location.* Except as may be restricted by the City agency may provide limited identifying information in response to a request from law enforcement for assistance in identifying or locating fugitives, suspects, witnesses, or missing persons.
- D. Crime Victims.* Except as may be restricted by the City agency may disclose PHI concerning an actual or suspected victim of a crime in response to law enforcement request in two circumstances:
 - 1. The individual agrees to the disclosure; or
 - 2. The individual's agreement cannot be obtained due to incapacity or emergency circumstances, and a law enforcement official represents that:

- a. The information is needed to determine if someone other than the individual has committed a crime and such information will not be used against the individual;
- b. The need for the information is acute and without it law enforcement efforts will be adversely affected; and
- c. The City agency determines in the exercise of professional judgment that disclosure is in the best interests of the individual.

E Decedents. Except as may be restricted by State law the City agency may contact law enforcement officials about the death of an individual and provide PHI concerning such individual, if it suspects the death may have resulted from criminal conduct.

F Crime on the Premises. Except as may be restricted by State law the City agency may disclose to law enforcement PHI that it believes in good faith to be evidence of a crime committed on its premises.

G Off-site Emergencies. Except as may be restricted by state law if the City agency is rendering emergency services off its premises, it may disclose PHI to the extent necessary to alert law enforcement to the commission, nature, or location of a crime or crime victim, and the identity, description and location of the perpetrator.